

(4) When the agency requests an advance payment, the time limits prescribed in section (a)(6) of the Freedom of Information Act will begin only after the agency has received full payment.

#### **§ 1100.7 Foundation report of actions.**

On or before March 1 of each calendar year, each member agency of the National Foundation on the Arts and the Humanities shall submit a report of its activities with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and to the President of the Senate. The report shall include:

(a) The number of determinations made by each member agency of the National Foundation on the Arts and the Humanities not to comply with requests for records made to the agency under the provisions of this part and the reasons for each such determination;

(b) The number of appeals made by persons under such provision, the result of such appeals, and the reasons for the action upon each appeal that results in the denial of information;

(c) The names and titles or positions of each person responsible for the denial of records requested under the provisions of this part and the number of instances of participation for each;

(d) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), as amended, including a report of the disciplinary action taken against the officer of employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(e) A copy of every rule made by the Foundation implementing the provisions of the FOIA.

(f) A copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(g) Such other information as indicates efforts to administer the provisions of the FOIA, as amended.

## **PART 1105—STANDARDS OF CONDUCT FOR EMPLOYEES**

AUTHORITY: 5 U.S.C. 7301.

SOURCE: 68 FR 52702, Sept. 5, 2003, unless otherwise noted.

### **§ 1105.1 Cross-reference to employee ethical conduct standards and financial disclosure and financial interests regulations.**

Employees of the National Endowment for the Arts and the National Endowment for the Humanities are subject to the executive branchwide standards of ethical conduct at 5 CFR part 2635; the executive branch employees responsibilities and conduct regulations at 5 CFR part 735; the executive branch financial disclosure regulations at 5 CFR part 2634, and the executive branch financial interests regulations at 5 CFR part 2640. Employees of the National Endowment for the Arts are also subject to that Agency's regulations at 5 CFR part 6501, which supplement the executive branchwide standards of conduct at 5 CFR part 2635. Employees of the National Endowment for the Humanities are also subject to that Agency's regulations at 5 CFR part 6601, which supplement the executive branchwide standards of conduct at 5 CFR part 2635.

## **PART 1110—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS**

Sec.

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APPENDIX A TO PART 1110—FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

AUTHORITY: 42 U.S.C. 2000d-2000d-7.

## § 1110.1

SOURCE: 38 FR 17991, July 5, 1973, unless otherwise noted.

### § 1110.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the “Act”), 42 U.S.C. 2000d *et seq.*, to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the National Endowment for the Arts, the National Endowment for the Humanities, or the Institute of Museum and Library Services.

[62 FR 66826, Dec. 22, 1997]

### § 1110.2 Application of part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the National Endowment for the Arts, the National Endowment for Humanities, or the Institute of Museum and Library Services, including the types of Federal financial assistance listed in appendix A of this part. It applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of the part, including assistance pursuant to an application approved prior to such date. It also applies to federal financial assistance extended to any such program prior to the effective date of this part under a contract or grant where the term of the contract or grant continues beyond such date or where the assistance was to provide real or personal property and the recipient or his transferee continues to use or retain ownership or possession of the property (see § 1110.4(a)(1)). This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contract, (b) any assistance to any individual who is the ultimate beneficiary under any such program, or (c) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 1110.3. The fact that a type of Federal financial assistance is not listed in Ap-

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pendix A shall not mean, if title VI of the Act is otherwise applicable, that a program is not covered. Other types of Federal financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

[38 FR 17991, July 5, 1973, as amended at 62 FR 66826, Dec. 22, 1997; 68 FR 51384, Aug. 26, 2003]

### § 1110.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected, to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity

to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the con-

sequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient may not directly or through contractual or other arrangements subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation and use of facilities), including programs where a primary objective of the Federal financial assistance is (i) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training or (ii) to provide work experience which contributes to the education or training of such individuals or (iii) to reduce the unemployment of such individuals or to help them through employment to meet subsistence needs.

(2) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Executive Order 11246 or any executive order which supersedes it.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national

origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of the foregoing subparagraph of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to and non-discriminatory treatment of, beneficiaries.

(d) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

#### § 1110.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to which this part applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer; and any other type or form of assistance, the assurances shall be in effect for the duration of the period during which Fed-

eral financial assistance is extended to the program. The responsible Endowment official shall specify the form of the foregoing assurances and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, successors in interest, and other participants. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interests therein, which was acquired with Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer, shall contain a covenant running with the land assuring non-discrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved with Federal financial assistance, the recipients shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Endowment to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Endowment official, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Chairman of the Endowment concerned may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forebear the exercise of such right to revert title for so long as the

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lien of such mortgage or other encumbrance remains effective.

(3) Transfers of surplus property are subject to regulations issued by the Administrator of the General Services Administration. (41 CFR 101-6.2)

(b) *Continuing Federal financial assistance.* Every application by a State or a State agency for continuing Federal financial assistance to which this part applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Endowment official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

(c) *Elementary and secondary schools.* The requirements of paragraph (a) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part within the earliest practicable time and provides reasonable assurance that it will carry out such plan. In any case of continuing Federal financial assistance, the responsible official of the Department of Health, Education, and Welfare may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such

school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for a special training project, or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

[38 FR 17991, July 5, 1973, as amended at 68 FR 51383, Aug. 26, 2003]

### § 1110.5 Illustrative applications.

The following examples will illustrate the application of the foregoing provisions to some of the activities for which Federal financial assistance is provided by the Endowments. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by title VI of the Act and this part, as a condition of the receipt of Federal financial assistance.)

(a) In a research, training, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university.

(b) In cases of Federal financial assistance to elementary or secondary schools, discrimination by the recipient school district in any of its elementary or secondary schools, or by the recipient private institution, in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustration

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the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(c) In a training grant to a nonacademic institution, discrimination is prohibited in the selection of individuals to be trained and in their treatment by the grantee during their training. In a research or demonstration grant to such an institution, discrimination is prohibited with respect to any educational activity, any provision of medical or other services and any financial aid to individuals incident to the program.

(d) Where Federal financial assistance is provided to assist in the presentation of artistic and cultural productions to the public, assurances will be required that such productions will not be presented before any audience which has been selected on a discriminatory basis.

(e) A recipient may not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly. Thus, a State, in selecting projects to be supported through a State agency, may not base its selections on criteria which have the effect of defeating or substantially impairing accomplishment of the objectives of the Federal financial assistance as respects individuals of a particular race, color, or national origin.

(f) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 1110.6(d) to provide information as to the availability of the program or activity, and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example of special arrangements for obtaining referrals or

making selections which will insure that groups previously subjected to discrimination are adequately served.

(g) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

[38 FR 17991, July 5, 1973, as amended at 68 FR 51383, Aug. 26, 2003]

### § 1110.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Endowment official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Endowment official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Endowment official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case in which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Endowment official or his designee during normal business

hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Endowment official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

[38 FR 17991, July 5, 1973, as amended at 68 FR 51384, Aug. 26, 2003]

#### § 1110.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Endowment official shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Endowment official a written complaint. A complaint must be filed not later than ninety days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Endowment official.

(c) *Investigations.* The responsible Endowment official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred,

and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Endowment official will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1110.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Endowment official will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

#### § 1110.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking,

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and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1110.4.* If an applicant fails or refuses to furnish an assurance required under § 1110.4 or otherwise fails to comply with that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Endowment concerned shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that such Endowment shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Endowment official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearings, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Chairman of the Endowment concerned, and (4) the expiration of 30 days after the Chairman has filed with the Committee of the House and the Committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Endowment official has determined that com-

pliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

### § 1110.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1110.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Endowment official that the matter be scheduled for hearing or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right of a hearing under section 602 of the Act and § 1110.8(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Endowment concerned in Washington, DC, at a time fixed by the responsible



Endowment official unless he determines that the convenience of the applicant or recipient or of the Endowment requires that another place be selected. Hearings shall be held before the responsible Endowment official or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Endowment shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Endowment and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence entered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related

facts are asserted to constitute non-compliance with this Regulation with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Chairman of the Endowment concerned may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 1110.10.

[38 FR 17991, July 5, 1973, as amended at 68 FR 51384, Aug. 26, 2003]

#### § 1110.10 Decisions and notices.

(a) *Decision by person other than the responsible Endowment official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Endowment official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible Endowment official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Endowment official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Endowment official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Endowment official.

(b) *Decisions on record or review by the responsible Endowment official.* Whenever a record is certified to the responsible Endowment official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Endowment official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Endowment official shall be given in writing to the applicant or recipient and to the complainant if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1110.9(a) a decision shall be made by the responsible Endowment official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible Endowment official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Chairman.* Any final decision of a responsible Endowment official (other than the Chairman) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Chairman, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended to the applicant or recipient determined by such

decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Endowment official that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation. (An elementary or secondary school or school system which is unable to file an assurance of compliance with § 1110.3 shall be restored to full eligibility to receive Federal financial assistance, if it files a court order or a plan for desegregation which meets the requirements of § 1110.4(c), and provides reasonable assurance that it will comply with this court order or plan.)

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Endowment official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Endowment official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Endowment official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Endowment official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are

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pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[38 FR 17991, July 5, 1973, as amended at 68 FR 51384, Aug. 26, 2003]

### § 1110.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

### § 1110.12 Effect on other regulations; forms and instructions.

(a) *Effects on other regulations.* Nothing in this part shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925, 11114, and 11246, and regulations issued thereunder, or (2) Executive Order 11063 and regulations issued thereunder or any other regulations or instructions insofar as such order, regulations, or instructions prohibit discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Endowment official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Chairman of an Endowment may from time to time assign to other officials of the Endowment or to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part, including the achievement of effective coordination and maximum uniformity within the Endowment and within the executive branch of the Government in the application of title VI and this part of similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had

been taken by the responsible official of this agency.

### § 1110.13 Definitions.

As used in this part:

(a) The term *Foundation* means the National Foundations for the Arts and the Humanities, and includes the National Endowment for the Arts, the National Endowment for the Humanities, the Institute of Museum and Library Services, and each of their organizational units.

(b) The term *Endowment* means the National Endowment for the Arts, the National Endowment for the Humanities, or the Institute of Museum and Library Services.

(c) The term *Chairman* means the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, or the Director of the Institute of Museum and Library Services.

(d) The term *responsible Endowment official* with respect to any program receiving Federal financial assistance means the Chairman of any Endowment or other Endowment official designated by the Chairman.

(e) The term *United States* means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term *State* means any one of the foregoing.

(f) The term *Federal financial assistance* includes (1) grants and loans of Federal funds, (2) the grant or the donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(g) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

(h) The term *facility* includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(i) The term *recipient* means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity or any indi-

vidual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary.

(j) The term *primary recipients* means any recipient which is authorized or required to extend Federal financial assistance to another recipient.

(k) The term *applicant* means one who submits an application, request, or plan required to be approved by a responsible Endowment official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term *application* means such an application, request, or plan.

[38 FR 17991, July 5, 1973, as amended at 62 FR 66826, Dec. 22, 1997; 68 FR 51383, Aug. 26, 2003]

#### APPENDIX A TO PART 1110—FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

1. Assistance to groups for projects and productions in the arts.
2. Surveys, research and planning in the arts.
3. Assistance to State arts agencies for projects and productions in the arts.
4. Support of research in the humanities.
5. Support of educational programs in the humanities, including the training of students and teachers.
6. Assistance to promote the interchange of information in the humanities.
7. Assistance to foster public understanding and appreciation of the humanities.
8. Support of the publication of scholarly works in the humanities.

### PART 1115—PRIVACY ACT REGULATIONS

#### Sec.

1115.1 Purpose and scope.

1115.2 Definitions.

1115.3 Procedures for notification of existence of records pertaining to individuals.

1115.4 Procedures for requests for access to or disclosure of records pertaining to an individual.

1115.5 Correction of records.

1115.6 Disclosure of records to agencies or persons other than the individual to whom the record pertains.

1115.7 Exemptions.

AUTHORITY: 5 U.S.C. 552a(f).

SOURCE: 40 FR 49286, Oct. 21, 1975, unless otherwise noted.